

1999

State of Utah v. Martha Jane Howell : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 991050-CA
vs.	:	
	:	Priority No. 2
MARTHA JANE HOWELL,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION FOR AGGRAVATED ASSAULT, A
THIRD DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT IN
AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE L.A. DEVER, PRESIDING.

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ORAL ARGUMENT AND PUBLISHED DECISION NOT REQUIRED

FILED
Utah Court of Appeals

AUG 15 2000

Paulette Stagg
Clerk of the Court

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals her conviction of aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1999). This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2) (e) (1996).

**STATEMENT OF THE ISSUE ON APPEAL AND
STANDARD OF APPELLATE REVIEW**

Issue: Did the trial court err in denying defendant's motion for directed verdict based upon the sufficiency of the evidence?

Standard of review: In challenging the sufficiency of the evidence, defendant "must first marshal all the evidence supporting the jury's verdict and then demonstrate how this evidence, even viewed in the most favorable light, is insufficient to support the verdict." *State v. Shepherd*, 1999 UT App. 305, ¶ 25, 989 P.2d 503 (citation omitted)

(quoting *State v. Strain*, 885 P.2d 810, 819 (Utah App. 1994)). This Court “will reverse a conviction for insufficient evidence only when the evidence is ‘so inconclusive or so inherently improbable that “reasonable minds must have entertained a reasonable doubt” that the defendant committed the crime.’” *State v. Harley*, 1999 UT App. 197, ¶ 9, 982 P.2d 1145 (quoting *State v. Goddard*, 871 P.2d 540, 543 (Utah 1994) and *State v. Petree*, 659 P.2d 443, 444 (Utah 1983)).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

No constitutional provisions, statutes, or rules are at issue in this appeal.

STATEMENT OF THE CASE

Defendant was charged with two counts of aggravated assault. She moved to sever the two counts, and the second count was dismissed. Defendant was convicted by a jury of the remaining count (R.70).

The trial court sentenced defendant to a prison term of 0-5 years, with the sentence suspended, and defendant was ordered to serve sixty days in jail and 36 months probation (R.89). Defendant timely appealed (R.93).

STATEMENT OF FACTS

Defendant had a rocky four-year relationship with William Roberts during which they lived together off and on (R.109:128). In February, 1999, Roberts and defendant were living apart. Defendant and her three children (Seth, age 10 at the time of this incident, Shawn, age 8, and Sabrina, age 4) were living in a two-bedroom apartment in

Murray, Utah (R.109:91-92,95-96,108). Defendant also had a roommate, Jack Scott, a retiree who slept either on the couch or in a motor home parked outside the apartment (R.109:170-71). Roberts was living in Springville, Utah, and would travel up to Murray on weekends to visit defendant (R.109:128,130).

Early one Friday afternoon, defendant called Roberts at work and asked if he would come up to her apartment that night (R.109:130). Roberts agreed, but told **defendant that he** needed to do some **laundry and shopping** first (*Id.*). While shopping, Roberts bought a Barbie doll as a gift for defendant's four-year-old daughter (R.109:131). He packed a gym bag for the weekend, and put the doll in it (R.109:133). **Because Roberts' car was not running, he had to take a bus to Murray, and did not arrive at defendant's apartment until 10:00 p.m. (*Id.*).**

When Roberts arrived, defendant and Jack Scott were in the front room watching television (R.109:132-33). Defendant's three children and a 10-year-old friend, Jeremy Seegmiller, were watching a video in the bedroom closest to the living room and front entrance (R.96,108-09). **Defendant was angry because Roberts was late (R.109:132).**

Defendant and Roberts went to the back bedroom, and defendant called Sabrina back (R.109:133-34). **When Roberts pulled the doll out of his bag to give it to defendant and Sabrina, defendant mocked him for bringing her a doll (R.109:134).** Defendant then told Roberts that she had **paged him, and asked why he had failed to respond to the page (*Id.*).** She told him that she would have said not to bother coming over (*Id.*). Roberts

explained that he could not answer the page because he was on the bus, and said “if you want me to go, I’ll go” (R.109:135). He then asked to use the telephone to call for a ride, because he had traveled by bus and could not catch another one at that hour (*Id.*).

Roberts tried to call his mother, who was asleep, and then tried to call a friend, who was not home. Defendant came in and said “who you calling, your girlfriend?” (*Id.*). Roberts said “no, you know better than that,” and defendant dialed *69 on the telephone to see whom Roberts had called (*Id.*). Roberts then tried to make another call, and defendant jerked the phone away from him and told him to “go use the phone somewhere else” (R.109:136). Roberts said “okay, whatever,” and prepared to leave by putting his coat on and picking up his bag. Defendant then came to the bedroom door holding a knife. Roberts said “hey, don’t worry, I’m out of here,” and walked to the front door (R.109:136-37).

As he was reaching for the door, Roberts saw defendant approach with the knife out of the corner of his eye. He turned, raising his arm to protect himself, and defendant stabbed him in the upper arm (R.109:137-38). The stab wound was very painful, and Roberts fell to the floor. He got up, yelling, and left the apartment (R.109:138).

After he left defendant’s apartment, Roberts knocked on other apartment doors until he found someone home who could call for help (R.109:138-39). An ambulance and the police arrived within a few minutes, and Roberts was taken to the hospital for treatment of a two-inch stab wound to his upper arm (R.109:69)

As soon as Roberts left the apartment, defendant sought to hide the evidence of her attack. She talked to the children and Scott, telling **them** that if the police came and asked about the incident, they should say that Roberts was already bleeding when he came into the apartment, and that he was drunk (R.109:113). She also told the children to tell the police that they had been sitting on the couch in the front room watching television when **Roberts had** come to the door (R.109:114). She then moved a couch to cover the blood stains on the floor (*Id.*). Defendant gave the knife she used to stab Roberts to Seth and told him to clean it off and hide it. Seth obeyed, hiding the knife inside the hollow metal frame of his bed (R.109:92-93,114-15).

One of several police officers responding to the scene, Officer Larry Zimmer, spoke with Roberts before he was taken to the hospital. Roberts told them that he had been stabbed at defendant's apartment (R.109:72). Officer Zimmer went to defendant's apartment and spoke with her briefly; defendant said that **Roberts** was already injured and bleeding when he came to her door, and that he took a few steps in before she pushed him back outside (R.109:73). Defendant said that she had no further involvement in the incident (*Id.*).

After speaking with Roberts at the hospital, Officer Zimmer returned to the scene and met Detective Jeff Anderson, who had interviewed Jeremy Seegmiller and Jack Scott (R.109:82,88-89). The officers together interviewed defendant. They asked defendant whether Roberts had, in fact, come into the apartment and stayed for a few minutes,

rather than just stepping inside and then leaving, as she had earlier asserted. Defendant then stated that Roberts had come in and used the telephone (R.109:82).

Detective Anderson asked defendant if she had stabbed Roberts. She denied it, insisting that she did not know how Roberts had been injured. She told the officers that she'd been watching a movie and Roberts had come to the door, knocked or rang the bell, and then barged his way in. She then pushed him out (R.109:90).

Defendant said she noticed that Roberts was bleeding when he first came in. Roberts was not complaining of his injury, however, but was asking who was there in the apartment. She said that sometime later, Roberts began complaining about the injury, and started yelling and screaming. She said that Roberts was only in the apartment for a short time (R.109:91).

Defendant was arrested, and the police continued their investigation, interviewing defendant's children and recovering the knife Seth had hidden in his bed frame (R.109:91-93).

SUMMARY OF THE ARGUMENT

In challenging the sufficiency of the evidence, defendant is required to marshal all of the evidence, and draw all reasonable inferences from that evidence in favor of the verdict. Defendant fails to meet her burden to marshal the evidence both because she ignores significant evidence, and because she draws every inference from that evidence contrary to the verdict.

Further, even if the inferences that defendant seeks to draw are accepted, contrary to the verdict, these inferences do not imply that the jury's verdict is unreasonable. The verdict indicates that the jury accepted the victim's testimony that he was attempting to leave defendant's apartment when defendant stabbed him from behind. None of the inferences regarding the victim's alleged hostility that defendant now argues (even if accepted contrary to the verdict) undermines this testimony or the jury's rejection of defendant's claim of self-defense.

ARGUMENT

POINT I

THE JURY'S VERDICT IS FULLY SUPPORTED BY THE EVIDENCE

Defendant asserts that the ~~evidence presented~~ to the jury at trial is ~~insufficient~~ to support the jury's conclusion that she did not act in self-defense when she stabbed William Roberts, and that the trial court therefore erred in denying her motion for a directed verdict. *See* Brief of Appellant, p. 9. To the contrary, the evidence presented by the State fully dispels any inference that defendant acted in self-defense, and the evidence presented by defendant to support her self-defense theory is both ambiguous and inherently contradictory.

A. Defendant has not met her burden to marshal the evidence

To properly challenge the sufficiency of the evidence, defendant is required in her brief to acknowledge the full extent of the evidence against her. "The burden is heavy on

a defendant challenging the sufficiency of the evidence. Defendant ‘must first marshal all the evidence supporting the jury's verdict and then demonstrate how this evidence, even viewed in the most favorable light, is insufficient to support the verdict.’” *State v. Shepherd*, 1999 Utah App. 305 ¶ 25, 989 P.2d 503 (citation omitted) (*quoting State v. Strain*, 885 P.2d 810, 819 (Utah App. 1994)). Reversal occurs “only when the evidence is so inconclusive or so inherently improbable that ‘reasonable minds must have entertained a reasonable doubt’ that the defendant committed the crime.” *Strain*, 885 P.2d at 819 (*quoting State v. Goddard*, 871 P.2d 540, 543 (Utah 1994) (additional quotations omitted)). *See also* Utah R. App. P. 24(a)(9) (“A party challenging a fact finding must first marshal all record evidence that supports the challenged finding.”) .

In her brief, defendant acknowledges ~~some~~, but not all, of the evidence presented. Defendant recites the facts testified to by the victim, but ignores the testimony by the other witnesses regarding her own actions and statements which provide additional evidence that she did not act in self-defense. *See* Brief of Appellant, pp. 12-15. Further, in describing the evidence presented, defendant draws every available inference contrary to the verdict: although Roberts testified that he did not threaten defendant at any time and was simply trying to leave the apartment when defendant stabbed him, defendant tries to argue that Robert’s assertions are “incredulous” because of other evidence that she believes implies that Roberts had some hostility toward her. *See* Brief of Appellant, pp. 14-20 (“In light of such evidence, it does not require a significant inferential leap to

see that Roberts was extremely hostile . . .”). By failing to discuss evidence of her lies to the police and other attempts to hide her involvement in the stabbing, and by drawing broad inferences adverse to the jury’s verdict, defendant has failed to marshal the evidence, and the court should not consider her sufficiency claim.

B. The jury’s rejection of defendant’s self-defense theory was reasonably based upon direct testimony.

As noted above, defendant failed to marshal all of the evidence supporting the jury’s verdict, but her brief does acknowledge the testimony of the victim, William Roberts. Defendant characterizes this testimony in her brief as follows:

The victim, Roberts, testified that Howell invited him to stay at her apartment for the weekend. When he arrived at the apartment, Howell began to verbally harass him about the fact that he did not answer her page. She also harassed him about a doll that he brought to her daughter.

Roberts testified that Howell told him to leave the apartment a few times. Roberts unsuccessfully attempted to call his mother and a friend in order to find a place to go. Roberts then went into a back room to give the doll to Howell’s daughter. Howell then approached Roberts with a knife. Roberts testified that he merely responded, “hey, don’t worry, I’m out of here” and headed for the front door. Roberts was reaching for the front door, with his back towards Howell, when she came at him with the knife. Roberts turned around with his hands raised in a defensive posture when she stabbed him in his upper right arm. Roberts fell to the floor, started yelling, then left the apartment.

Brief of Appellant, p. 12 (citations omitted). Even this limited description of the evidence is entirely sufficient to prove that defendant did not act in self-defense, since it proves that defendant stabbed Roberts from behind, as he was attempting to leave the

apartment. If this testimony is credited, as it was by the jury, there is ample evidence to support the verdict and reject defendant's claim of self-defense.

To avoid the obvious significance of this testimony, defendant argues that the victim was not a credible witness, asserting on appeal the same general attack on the victim's credibility that was argued at trial and rejected by the jury. On appeal, the jury's assessment of the victim's credibility is not subject to weighing by this court. "We may not weigh evidence or assess witness credibility, but instead 'assume that the jury believed the evidence and inferences that support the verdict.'" *State v. Chaney*, 1999 UT App 309, ¶30, 989 P.2d 1091 (Utah App. 1999) (quoting *State v. Wood*, 868 P.2d 70, 87 (Utah 1993)); *see also State v. Merila*, 966 P.2d 270, 272 (Utah App. 1998) ("It is not the function of a reviewing court to determine guilt or innocence or judge the credibility of witnesses."). It is true that an appellate court may, "in some unusual circumstances," assess witness credibility. *State v. Workman*, 852 P.2d 981, 984 (Utah 1993). However, such circumstances are limited to testimony that is "inherently improbable" in that there "must exist either a physical impossibility of the evidence being true, or its falsity must be apparent, without any resort to inferences or deductions." *Id.* Roberts' testimony does not describe actions that are physically impossible and is not obviously false. Rather, in attacking the victim's credibility, defendant resorts entirely to "inferences or deductions" from other testimony; possible inferences and deductions that were evaluated and rejected by the jury.

In challenging the victim's credibility, defendant draws broad inferences from three types of evidence: evidence of a loud argument between Roberts and defendant that evening, evidence of Robert's prior actions toward defendant, and evidence of provocation by defendant. None of this evidence reaches the core issue of the victim's credibility on the issue of whether defendant stabbed him from behind, and relies entirely upon inferences rejected by the jury.

Evidence of the argument that night (Brief of Appellant, p. 14-16). Defendant describes at length testimony that implies defendant and Roberts were arguing loudly that night. At most, and drawing inferences *adverse* to the jury verdict, this evidence only implies that at trial, Roberts may have understated his level of agitation that night to some degree during his testimony. However, this evidence does not at all address the fundamental fact of guilt that the jury decided; i.e., whether defendant stabbed Roberts as he was trying to leave. In order to strengthen the inference, defendant asserts that there was evidence that Roberts "got physical" with her prior to the stabbing. Brief of Appellant, p. 16. However, this inference is largely based upon the testimony of Jack Scott, who also testified directly that defendant acted in self-defense (R.109:172), and whose testimony was necessarily rejected by the jury as not credible. Defendant is left, therefore, with another inference (again, *adverse* to the verdict) based upon Jeremy Seegmiller's vague testimony that he heard "big bumps" on the ground from another room (R.109:122-23). This evidence, even if believed, is not sufficient to support any

conclusion about Roberts' actions toward defendant, let alone sufficient to *compel* a conclusion that defendant acted in self defense at the time she stabbed Roberts.

Evidence of Roberts' general hostility (Brief of Appellant, p. 17-18). Defendant asserts that the evidence shows Roberts was hostile and threatening in their relationship generally, citing Roberts' admissions that he was upset over defendant's infidelity, and quoting phone messages and a letter written by Roberts. These statements are of little relevance to the issue of defendant's claim of self-defense. The phone messages are profane, but do not in any way constitute threats of physical violence. Even defendant could not have considered them to be threatening to her, as it is undisputed that defendant called Roberts and invited him to spend the weekend with her, after the messages had been left. The letter likewise could not be construed as evidence of physical violence toward defendant; it actually constitutes an offer of money, a profession of love, and a proposal of marriage. However, even if one assumes, contrary to the obvious import of these statements and contrary to the inferences dictated by the jury's verdict, that defendant had some level of physical hostility toward defendant, that would not imply that the jury was unreasonable in finding that Roberts had turned to leave the apartment when defendant stabbed him from behind.

Evidence of defendant's provocation (Brief of Appellant, p.19). Defendant asserts that Roberts must have been lying when he denied physically attacking her, because her own "obnoxious" behavior inevitably would have angered him. Even this proposed

inference, however, does not support a further inference that Roberts therefore became so angry that he attacked defendant, requiring her to defend herself by stabbing him. At most, the irrational, provocative behavior by defendant that Roberts described provides only a possible inference (adverse to the jury's verdict) that Roberts could have been understating the extent of his own anger that night. More reasonably (and consistent with the verdict), however, this irrational behavior merely substantiates Roberts' testimony that defendant's attack on him was unprovoked.

In essence, defendant is arguing that the jury's verdict should be overturned on the basis of an inference based upon another inference. First, defendant is asserting that the jury reasonably *must* have inferred that Roberts was hostile towards defendant on that evening, even in the face of contrary evidence. Second, defendant is asserting that, based entirely upon that first inference of hostility, the jury *must also* have inferred that Roberts must have acted in such a threatening way that defendant had to stab him to protect herself.

* * *

"When there is any evidence, including reasonable inferences that can be drawn from it, from which findings of all the requisite elements of the crime can be reasonably made, our inquiry stops and we sustain the verdict." *State v. Underwood*, 737 P.2d 995, 996 (Utah 1987). The jury accepted Roberts' testimony that he was leaving the apartment when defendant stabbed him from behind, and none of the evidence generally

attacking Roberts' credibility now cited by defendant is sufficient to overcome this basic finding by the jury. The jury was confronted with two conflicting versions of the events on that evening: one from William Roberts and one from Jack Scott. The jury believed Roberts.¹

As defendant acknowledges in her brief, "In cases involving issues of self-defense, 'contradictory testimony, without more, is not grounds for reversal.'" Brief of Appellant, p. 14 (quoting *State v. Buel*, 700 P.2d 701, 703 (Utah 1985)). The possible inferences defendant now argues should be drawn are contrary to the jury's verdict, and should not be considered on appeal. Nevertheless, even if these inferences are accepted, they do not render the direct testimony relied upon by the jury so "inconclusive or inherently improbable" as to be insufficient as a matter of law to support the verdict. *Chaney*, 1999 UT App 309, ¶30.

¹ In order to believe Scott, the jury would have had to ignore the fact that Scott originally lied to the police, and would have had to believe that although Roberts traveled two hours by bus to visit defendant and brought a carefully chosen, sentimental gift for her and her daughter, upon arrival he immediately and angrily pushed his way in the apartment door and shoved defendant down the hall. Further, the jury would have had to accept the proposition that although defendant called and invited Roberts over for the weekend, she was afraid of him, and would have had to believe that although defendant thought she was justified in using the knife in self-defense, she nevertheless attempted to destroy the evidence, lied to police, and then instructed her children to lie in an attempt to cover up her actions.

CONCLUSION

For the reasons stated, defendant's conviction should be affirmed.

RESPECTFULLY SUBMITTED this 15 day of August, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Appellee were mailed by first class mail this 15 day of August, 2000 to:

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